



STATE OF NEW JERSEY
Board of Public Utilities
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CLEAN ENERGY

ORDER

IN THE MATTER OF THE IMPLEMENTATION OF <u>P.L. 2012, C. 24, THE SOLAR ACT OF 2012</u>)	DOCKET NO. EO12090832V
)	
IN THE MATTER OF THE IMPLEMENTATION OF <u>P.L. 2012, C. 24, N.J.S.A. 48:3-87(T) – A</u>)	
PROCEEDING TO ESTABLISH A PROGRAM TO PROVIDE SRECS TO CERTIFIED BROWNFIELD, HISTORIC FILL AND LANDFILL FACILITIES)	DOCKET NO. EO12090862V
)	
PUBLIC SERVICE ELECTRIC AND GAS COMPANY KINSLEY'S LANDFILL)	DOCKET NO. QO18121328

Party of Record:

Claudia Rocca, Public Service Electric and Gas Company

BY THE BOARD:

This Order concerns an application by Public Service Electric and Gas Company ("PSE&G" or "Applicant") for certification pursuant to P.L. 2012, c. 24 ("Solar Act"), codified at N.J.S.A. 48:3-87(t) ("Subsection (t)"). PSE&G seeks certification for eligibility to generate Solar Renewable Energy Certificates ("SRECs") for the proposed solar electric generation facility to be located at Kinsley's Landfill in Deptford Township, Gloucester County, New Jersey. PSE&G alleges that the proposed site is a properly closed sanitary landfill facility as defined in the Solar Act.

BACKGROUND

On July 23, 2012, the Solar Act was signed into law. The Solar Act amends certain aspects of the statute governing generation, interconnection, and financing of renewable energy. Among other actions, the Solar Act requires the New Jersey Board of Public Utilities ("Board") to

conduct proceedings to establish new standards and to develop new programs to implement the statute's directives. By Order dated October 10, 2012, the Board directed Board staff ("Staff") to initiate proceedings and convene a public stakeholder process to fulfill the directives of the Solar Act.¹

The Solar Act – specifically, Subsection (t) – provides that:

No more than 180 days after [July 23, 2012], the board shall, in consultation with the Department of Environmental Protection and the New Jersey Economic Development Authority, and, after notice and opportunity for public comment and public hearing, complete a proceeding to establish a program to provide SRECs to owners of solar electric power generation facility projects certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill or on a properly closed sanitary landfill facility. . . . Projects certified under this subsection shall be considered "connected to the distribution system" [and] shall not require such designation by the board[.]

[N.J.S.A. 48:3-87(t).]

The Solar Act defines the terms "brownfield," "area of historic fill," and "properly closed sanitary landfill facility." A "brownfield" is "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant." N.J.S.A. 48:3-51. "Historic fill" is "generally large volumes of non-indigenous material, no matter what date they were placed on the site, used to raise the topographic elevation of a site" *Ibid.* A "properly closed sanitary landfill facility" means "a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection" *Ibid.*

Toward implementing the October 10, 2012 Order, Staff met with staff of the New Jersey Economic Development Authority and the New Jersey Department of Environmental Protection ("NJDEP" or "Department"). On November 9, 2012, consistent with the requirements of the Solar Act, the Board held a public hearing presided over by Commissioner Joseph L. Fiordaliso. In addition, the public was invited to submit written comments through November 23, 2012.

¹ I/M/O the Implementation of L. 2012, C. 24, The Solar Act of 2012; I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(d)(3)(b) – A Proceeding to Investigate Approaches to Mitigate Solar Development Volatility; I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(e)(4) – Net Metering Aggregation Standards; I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(Q), (R) and (S) – Proceedings to Establish the Processes for Designating Certain Grid-Supply Projects as Connected to the Distribution System; I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide Solar Renewable Energy Certificates to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O the Implementation of L. 2012, C. 24, N.J.S.A 48:3-87(W) – A Proceeding to Consider the Need for a Program to Provide a Financial Incentive to Supplement Solar Renewable Energy Certificates for Net Metered Projects Greater than Three Megawatts; 2012 N.J. PUC LEXIS 286 (Oct. 10, 2012).

In an Order dated January 24, 2013, the Board approved Staff's proposed process for certifying solar generation projects as being located on brownfields, areas of historic fill, and properly closed sanitary landfill facilities.² The certification process for projects seeking approval pursuant to Subsection (t) provides three (3) potential recommendations from Staff to the Board: full certification, conditional certification, or denial of certification. Conditional certification may be granted for projects located on sites which NJDEP has determined require further remedial action or, in the case of properly closed sanitary landfill facilities, additional protective measures, and full certification may be granted for projects located on sites for which NJDEP has determined no further remedial or protective action is necessary. The process incorporates the expertise of the NJDEP to confirm a potential project's land use classification for eligibility and to account for the state of remediation of the project site. 2013 N.J. PUC LEXIS 27 at 31-33.

The January 24, 2013 Order states that certification would be limited to those areas delineated by NJDEP. In compliance with this directive, applicants are required to delineate the precise section(s) of the location where the solar facility is proposed to be sited, and NJDEP reviews this material in making its recommendation.

The Board found that an application for solar projects located on brownfields, areas of historic fill, or properly closed sanitary landfill facilities was necessary to initiate the certification process and directed Staff to work with NJDEP to develop an application. *Id.* at 33. On or about April 10, 2013, Staff distributed, via the public renewable energy stakeholder email distribution list and posted to the NJCEP and BPU websites, a Subsection (t) application form.

Projects certified under Subsection (t) of the Solar Act are subject to all of the Board's rules; the statutory language exempts such projects from the need for further Board designation as "connected to the distribution system" but does not remove any of the Board's oversight authority. For example, projects must comply with the rules at N.J.A.C. 14:8-2.4 and applicable Board orders concerning registration with the SREC Registration Program ("SRP"). The size and location of the subject project will then be reflected in the public reporting of solar development pipeline data.

On May 23, 2018, Governor Murphy signed P.L. 2018, c. 17 ("Clean Energy Act"), which requires the Board to close the SRP once the Board has determined that 5.1% of the total kilowatt-hours sold in New Jersey have been generated by SREC-eligible solar generation installations ("5.1% Milestone"). The Clean Energy Act also sets the SREC term as ten years. Pursuant to the Clean Energy Act and Board Orders dated October 29, 2018³ and February 27, 2019,⁴ a proposed solar electric generation facility that submits a Subsection (t) application after October 29, 2018 is eligible to receive a ten-year SREC term, provided that the project achieves

² I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities; and I/M/O the Implementation of L. 2012, c. 24, N.J.S.A 48:3-87(U) – A Proceeding to Establish a Registration Program for Solar Power Generation Facilities, 2013 N.J. PUC LEXIS 27 (Jan. 24, 2013).

³ I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2018 N.J. PUC LEXIS 251 (Oct. 29, 2018).

⁴ I/M/O the Modification of the Solar Renewable Portfolio Standard and Solar Alternative Compliance Payment Schedules and the Reduction of the Qualification Life for Solar Renewable Energy Certificates for Solar Facilities, 2019 N.J. PUC LEXIS 20 (Feb. 27, 2019).

commercial operation prior to the Board's closure of the SREC program upon attainment of the state's 5.1% solar milestone and is otherwise in compliance with applicable law.

On October 29, 2013, PSE&G submitted an application to the Board to have its proposed 10 MWdc solar electric generation facility – located on Kinsley's Landfill in Deptford Township, New Jersey – certified as located on a properly closed landfill pursuant to Subsection (t). On the basis of NJDEP's determination that the area on which the solar electric power generation facility was to be located constituted a "landfill" as defined by the Solar Act and that completion of additional protective measures were necessary at the landfill, the Board granted conditional certification of the proposed project in an Order dated December 18, 2013.⁵

On May 6, 2014, PSE&G filed an amended application with the Board requesting approval for an increase in system size from 10 MWdc to 11.18 MWdc, based on optimization of panels and arrangements. On the basis of NJDEP's determination that the increase in system size did not represent a material change with respect to NJDEP's prior recommendation that Kinsley's Landfill was a properly closed landfill and did not impact the footprint of the array on the landfill, the Board approved conditional certification of the proposed project, as amended, in an Order dated August 20, 2014.⁶ This project received permission to operate on December 22, 2014. It was constructed, is operational, and received full certification.

STAFF RECOMMENDATIONS

Project Description

As stated above, at issue is the request by PSE&G that its proposed solar facility, to be located in Deptford Township, New Jersey, be certified as eligible for SRECs pursuant to Subsection (t). PSE&G filed an application with supporting documentation to enable a NJDEP determination as to whether the proposed site is a properly closed sanitary landfill facility. NJDEP reviewed the application and supplied an advisory memorandum to Staff on March 12, 2019 on the land use classification and the closure or remediation status of the proposed site. On the basis of NJDEP's determination, the information certified by PSE&G in its application, and the January 24, 2013 Order, Staff recommends that the Board grant conditional certification, as explained further below.

Developer	Docket Number	Project Designation	Location / Town	County	Landfill, Brownfield, or Historic Fill	Array (MWdc)	EDC
PSE&G	QO18121328	Kinsley's Landfill	Block 387.01 Lots 55, 57, 65, 66 Hurffville Rd Deptford Township, NJ	Gloucester	Landfill	5	PSE&G

⁵ I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L.2012, c.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities – Public Service Electric and Gas Company – Kinsley Landfill, 2013 N.J. PUC LEXIS 364 (Dec. 18, 2013).

⁶ I/M/O the Implementation of L. 2012, c. 24, The Solar Act of 2012; I/M/O the Implementation of L.2012, C.24, N.J.S.A 48:3-87(T) – A Proceeding to Establish a Program to Provide SRECS to Certified Brownfield, Historic Fill and Landfill Facilities – Public Service Electric and Gas Company – Kinsley's Landfill, 2014 N.J. PUC LEXIS 214 (Aug. 20, 2014).

PSE&G – Kinsley’s Landfill – Docket No. QO18121328

On December 13, 2018, PSE&G submitted its application to the Board to have its project certified as being located on a properly closed sanitary landfill facility pursuant to Subsection (t) of the Solar Act. Applicant’s 5 MWdc project is proposed to be located on 10.7 acres of land owned by Kinsley’s Landfill, Inc. at Block 387.01, Lots 55, 57, 65, and 66, at Hurffville Road in Deptford Township, Gloucester County, New Jersey.

Staff forwarded the application to NJDEP for review and a recommendation as described above. NJDEP indicated that Kinsley’s Landfill is approximately 137 acres in size and operated from 1960–1987, accepting municipal, commercial, and industrial waste. NJDEP approved a Closure and Post-Closure Plan for the landfill on July 1, 1987. On April 5, 1989, NJDEP received the engineer’s certification of completion of final cover, which documented completion of closure activities at the landfill. NJDEP accepted the final cover certification on July 28, 1989. NJDEP noted that the terms of the Closure and Post-Closure Plan Approval have been modified on several occasions and that, most recently, the terms extended the post-closure care period through June 30, 2027.

NJDEP noted that the solar installation will constitute the construction of improvements on a closed landfill pursuant to the law, and, accordingly, the property owner will need to obtain an approval from NJDEP’s Division of Solid and Hazardous Waste for construction of improvements on the closed landfill, as well as any permits identified by NJDEP, and approval from any other applicable state or federal agency. NJDEP stated that approval for construction of improvements on the closed landfill needs to address impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to ongoing maintenance and monitoring during the post-closure period. Consistent with the above requirements, NJDEP noted that the property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap.

Based on the information provided in the application and NJDEP’s determination that the proposed solar array, as rendered in Figure 3 and entitled “Conceptual Solar Layout,” is located on a “properly closed sanitary landfill facility” under the Solar Act, Staff recommends that the Board grant conditional certification of the proposed project.

FINDINGS AND CONCLUSIONS

The Board **FINDS** that, as required by Subsection (t), Staff transmitted the application discussed above to NJDEP for a determination of eligible land use type and status of remediation on the proposed site. NJDEP has determined that the solar array proposed for Block 387.01, Lots 55, 57, 65, and 66, as rendered in the “Conceptual Solar Layout,” is located on land meeting the Solar Act’s definition of a “properly closed sanitary landfill facility.” To be eligible for the creation of SRECs, the entire solar array must be placed solely within the 10.7 acres shown on the Conceptual Solar Layout. Based on information provided by NJDEP, the Board **FINDS** that the Kinsley’s Landfill project is located on land meeting the definition of a “properly closed sanitary landfill facility.”

The Board also **FINDS** that NJDEP has determined that the property owner will need to obtain an approval from NJDEP's Division of Solid and Hazardous Waste for construction of improvements on the closed landfill, as well as any permits identified by NJDEP, and approval from any other applicable state or federal agency prior to construction of the solar electric power generation facility. The Board also **FINDS** that approval for construction of improvements on the closed landfill must address "impacts on the environmental controls in place at the site, such as the protection/re-establishment of the final cap/cover, leachate collection, gas collection and storm water collection systems, settlement, slope stability, and control of erosion, in addition to ongoing maintenance and monitoring during the post-closure period." The property owner and operator of the solar facility should ensure that all future operations continue to protect the integrity of the cap on Kinsley's Landfill.

The Board **FINDS** that NJDEP's requirements must be addressed and thus **GRANTS** conditional certification of the Applicant's proposed solar electric generation facility, to be located on 10.7 acres at Kinsley's Landfill at Block 387.01, Lots 55, 57, 65, and 66 in Deptford Township, Gloucester County, New Jersey, with an array size not to exceed 5 MWdc. To obtain full certification, the Board **DIRECTS** the Applicant to demonstrate to Staff that there are no outstanding requirements under the Closure and Post-Closure Plan Approval and that all NJDEP or federal requirements have been satisfied.

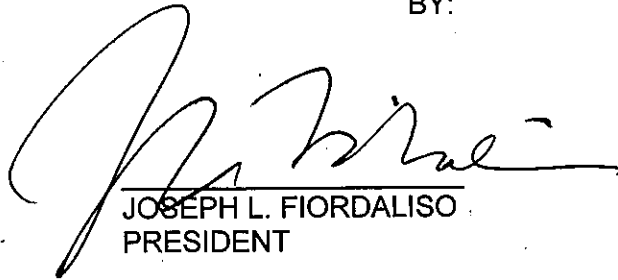
In addition, to obtain full certification, the Board **DIRECTS** PSE&G to submit an initial SRP registration package within fourteen (14) days of the effective date of this order, in accordance with N.J.A.C. 14:8-2.4(c). The Board **DIRECTS** Staff to issue full certification to the project upon the Applicant's demonstration that all requirements for full certification – including all NJDEP requirements and all SRP requirements at N.J.A.C. 14:8-2.4 – have been satisfied and provided that the project achieves commercial operation prior to the Board's closure of the SREC program upon attainment of the state's 5.1% solar milestone and is otherwise in compliance with applicable law. After the Applicant has received full certification, the Board **DIRECTS** Staff to issue a New Jersey Certification Number to the project for purposes of SREC creation for a ten-year Qualification Life.

This Order is issued in reliance on the information certified in the application and does not grant any rights in connection with construction of the proposed project beyond certification under Subsection (t), provided that the facilities are constructed in accordance with NJDEP requirements, the plans as represented in the application, and the SRP registration.

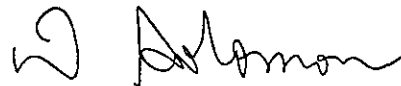
This Order shall be effective on April 28, 2019.

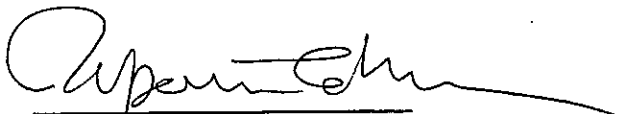
DATED: 4/18/19

BOARD OF PUBLIC UTILITIES
BY:

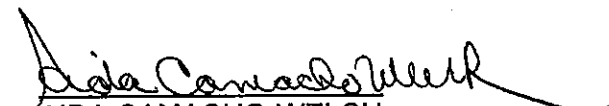

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ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

In the Matter of the Implementation of L. 2012, c. 24, the Solar Act of 2012;
In the Matter of the Implementation of L. 2012, c. 24, N.J.S.A. 48:3-87(t) – A Proceeding to
Establish a Program to Provide SRECs to Certified Brownfields, Historic Fill and Landfill
Facilities; Public Service Electric and Gas Company – Kinsley's Landfill

Docket Nos. EO12090832V, EO12090862V, and QO18121328

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